

SB 646 PROTECTS WATER QUALITY IN CALIFORNIA

The Porter-Cologne Act authorizes regional water boards to issue waivers of reporting and permitting requirements under certain conditions. In **SB 390 of 1999 (Alpert)** and **SB 923 of 2003 (Sher)** the Legislature specified the conditions under which waivers are to be granted. Among the conditions is a stipulation that the waiver must be in the “public interest.” **Most new waivers are falling short of this legislative mandate.**

The “Public Interest” Problem:

- Boards are issuing waivers as a catch-all regulatory device instead of following legislative direction to take a hard look at whether a waiver is in the public interest.

The “Public Interest” Solution in SB 646

- SB 646 restricts the ability of regional water boards to issue waivers for discharges of pollutants into those bodies of water that are listed as “impaired” under the Federal Clean Water Act Section 303(d) (the 303(d) list).
- The 303(d) list sets out those bodies of water where uses like swimming, drinking water, and wildlife habitat are impaired. **It is not in the public interest to waive regulation of the very pollutants that caused the water bodies to fail Clean Water Act Standards.**

Implementation and Enforcement Problems:

- Normal remedies set out under the Porter-Cologne Act are not available to enforce conditions set out in waivers.
- Many boards issue waivers even though dischargers and discharges remain unidentified.
- Few boards require site inspections.
- Several boards allow a polluter to self-certify compliance.
- None of the boards have a monitoring program that satisfies the monitoring requirements added by SB 923.

Implementation and Enforcement Solutions in SB 646:

- SB 646 requires the board to make an **affirmative finding** that a waiver is in the public interest.
- SB 646 ensures enforcement with **adequate funding** from mandatory fees.
- SB 646 ensures that routine **enforcement mechanisms** in Porter-Cologne apply to waiver conditions.